

UNITED STATES DISTRICT COURT  
District of Massachusetts

Case Number 04-12485 RWZ

Francis G. Falzarano  
D/B/A North Hill Construction Co.  
Plaintiff

v.

Medford Housing Authority

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**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO  
AMEND COMPLAINT**

The Defendant Medford Housing Authority hereby opposes the Plaintiff's Motion for Leave to Amend Complaint and re-iterates the previous Defendants' Motion to Dismiss Complaint and for Costs for the following reasons:

1. The Defendant Medford Housing Authority's previously filed Motion to Dismiss Complaint, a copy of which is attached hereto as Exhibit B (attached to said Motion are its own Exhibits A-1 and A-2), moves that the previously filed Complaint be dismissed because there is no proper federal court jurisdiction over the subject matter in this case pursuant to F.R.C.P. Rule 12 (b), and 28 U.S.C. § 1332.
2. Neither the initial complaint nor the Plaintiff's Motion for Leave to Amend Complaint alleges any diversity of citizenship that would confer federal court jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff's Motion for Leave to Amend Complaint still does not allege any diversity of citizenship when it says that the Medford Housing Authority was funded by HUD. The Medford Housing Authority is a Massachusetts corporation, as it is a public body corporate and politic organized under Massachusetts General Laws Chapter 121 B. The Medford Housing Authority is not a federal agency

and is not a citizen or subject of a foreign state. 28 U.S.C. § 1332 (c) (1) states that “a corporation shall be deemed a citizen of any state by which it has been incorporated and of the State where it has its principal place of business.” The Defendant Medford Housing Authority, which is incorporated in Massachusetts and has its principal and only place of business in Massachusetts, is a citizen of Massachusetts, and the Plaintiff Francis G. Falzarano D/B/A North Hill Construction Company is, by Plaintiff’s own admission in his Complaint, a resident of Lynnfield, Massachusetts, thereby providing no diversity of citizenship as required under 28 U.S.C. § 1332.

3. The Plaintiff’s Motion for Leave to Amend Complaint claims that there is an illegal holding of a \$20,000.00 cash deposit. This claim is clearly incorrect, since there is no illegal holding and the amount properly withheld by the Defendant Medford Housing Authority is only approximately \$14,355.00. Notwithstanding any factual discrepancy, the allegation that only \$20,000.00 is held, together with the impossibility that any added interest could even approximate a fraction of the amount of \$75,000.00 for a contract that the Plaintiff’s Complaint alleges was entered into January 2004, indicates that the Plaintiff could not possibly be adjudged to be entitled to recover \$75,000.00.

4. The Plaintiff, despite discussion with the Defendant Medford Housing Authority with regard to the lack of diversity of citizenship and jurisdiction of the federal court, has refused to properly resolve this matter and has continued with inaccurate and irresponsible allegations, and has failed to act reasonably in pursuing this claim.

WHEREFORE, for the above reasons, the Defendant Medford Housing Authority hereby opposes Plaintiff’s Motion for Leave to Amend Complaint and moves and

requests that this Court allow the previously filed Defendant's Motion to Dismiss Complaint and for Costs.

Respectfully submitted  
Medford Housing Authority  
By its attorney:

Date: January 12, 2005

John L. Greco  
John L. Greco  
c/o Medford Housing Authority  
121 Riverside Avenue  
Medford, MA 02155  
Telephone No. 781-396-7200  
BBO # 208460

CERTIFICATE OF SERVICE

I, John L. Greco, attorney for the Medford Housing Authority, hereby certify that on this day, by mailing same postage-prepaid first class mail and Certified Mail Return Receipt Requested, I served a copy of

Defendant's Opposition to Plaintiff's Motion for Leave to Amend Complaint  
(including Attachments).

on Francis G. Falzarano, D/B/A North Hill Construction Co., Plaintiff, 19 North Hill Drive, Lynnfield, Massachusetts 01940.

Signed and sworn to under pains and penalties of perjury.

Date: January 12, 2005

John L. Greco  
John L. Greco  
c/o Medford Housing Authority  
121 Riverside Avenue  
Medford, MA  
Telephone No. 781-396-7200  
BBO #208460

PART 1 ☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT PEABODY ☐ HOUSING COURT Division Division

PART 2 PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE NORTH HILL CONST. CO. 19 NORTH HILL DRIVE LYNNFIELD MA. 01940 PHONE NO: 781-334-6710 PLAINTIFF'S ATTORNEY (if any) Name: EXHIBIT A-1 Address: 1933B00005/11/03/04 CLAIM 79 1933B00005/13/04 SURCHARGE 19.9

PART 3 DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE MEDFORD HOUSING AUTHORITY JOHN GRECO DIRECTOR 121 RIVERSIDE AVE. MEDFORD MA. 02156 PHONE NO: 781-396-7200 ADDITIONAL DEFENDANT (if any) Name: Address: PHONE NO: BBO NO:

PART 4 PLAINTIFF'S CLAIM. The defendant owes \$2000. plus \$40. court costs for the following reasons: Give the date of the event that is the basis of your claim. ON 1/23/04 PLAINTIFF GAVE \$19,000. CHECK TO DEFENDANT FOR SECURITY DEPOSIT ON CONSTRUCTION CONTRACT. CHECK WAS SUPPOSED TO BE FOR \$9,500. DEFENDANT HAS REFUSED TO THIS DATE TO RETURN THE \$9,500. I DEMAND 12% INTEREST AND TRIPLE DAMAGES EVEN IF THE CHECK IS RETURNED BEFORE THE COURT DATE

SIGNATURE OF PLAINTIFF DATE 5/13/04

PART 5 MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date. ☐ The plaintiff is willing to attempt to settle this claim through court mediation.

PART 6 MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the: ☒ above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address. ☐ above defendant(s) is (are) serving in the military SIGNATURE OF PLAINTIFF DATE 5/13/04

NOTICE OF TRIAL NOTICE TO DEFENDANT: You are being sued in Small Claims Court by the above named plaintiff. You are directed to appear for trial of this claim on the date and time noted to the right. If you wish to settle this claim before the trial date, you should contact the plaintiff or the plaintiff's attorney. SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM NAME AND ADDRESS OF COURT PEABODY DISTRICT COURT ONE LOWELL ST PEABODY MA 01960 DATE AND TIME OF TRIAL OCTOBER 22, 2004 9AM AT TIME ROOM NO BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED COURT USE ONLY

FIRST JUSTICE SANTO J. RUMA CLERK-MAGISTRATE OR DESIGNEE MARY COAN

INSTRUCTIONS FOR FILING A SMALL CLAIM — You must complete Parts 1-6 of this form. See instructions on reverse.

ATENCIÓN: ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÉS, OBTENGA UNA TRADUCCIÓN.

EXHIBIT A-1

# JUDGMENT FOR DEFENDANT(S)

DOCKET NUMBER

200486SC000562

Trial Court of Massachusetts  
2005 Court Department  
Small Claims Session



CASE NAME NORTH HILL CONSTRUCTION CO vs. MEDFORD HOUSING AUTHORITY AS OFFICER OF OR AGENT FOR JOHN GRECO

PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT  
P01 NORTH HILL CONSTRUCTION CO

CURRENT COURT  
Peabody District Court  
One Lowell Street  
P.O. Box 666  
Peabody, MA 01960-0666  
(978) 532-3100

DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT  
D01 MEDFORD HOUSING AUTHORITY as officer of or agent for JOHN G

ROOM/SESSION

←←←←←  
WHEN  
YOU  
MUST  
APPEAR  
←←←←←

PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED  
D01 MEDFORD HOUSING AUTHORITY as officer of or agent for JOHN GRECO  
121 RIVERSIDE AV  
W MEDFORD, MA 02156

EXHIBIT A-2

ATTORNEY FOR PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

## JUDGMENT FOR DEFENDANT(S)

On the above claim, after trial by a magistrate, the Court has entered JUDGMENT IN FAVOR OF THE DEFENDANT(s) listed above. This means that the defendant(s) does not have to pay the plaintiff(s) any part of the claim or costs in this claim.

The plaintiff(s) does not have any right of appeal from this judgment. Uniform Small Claims Rule 8 provides that for good reason a plaintiff may file a motion within one year of this judgment, with notice to the defendant(s), requesting the Court to vacate or amend this judgment.

DATE JUDGMENT ENTERED  
10/25/2004

CLERK-MAGISTRATE/ASST. CLERK  
X

*Ami C. Frazier*

**EXHIBIT A-2**

**Exhibit A-2**

**EXHIBIT B**

**UNITED STATES DISTRICT COURT  
District of Massachusetts**

**Case Number 04-12485 RWZ**

**Francis G. Falzarano  
D/B/A North Hill Construction Co.  
Plaintiff**

v.

**Medford Housing Authority  
Director, John Greco**

**DEFENDANTS' MOTION TO DISMISS COMPLAINT AND FOR COSTS**

The Defendants Medford Housing Authority and Director, John Greco moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.
2. To dismiss the action on the grounds that the matter is res judicata having been heard on October 22, 2004 by the Peabody District Court in Essex County, Massachusetts with judgment for the defendant Medford Housing Authority and with no appeal taken or pending, all as set forth in decision of said Court on October 25, 2004, a copy of which Complaint and Decision is hereto annexed as Exhibit A-1 (Complaint) and Exhibit A-2 (Decision).
3. To dismiss the action for lack of jurisdiction over the subject matter under Rule 12 (b) for the following reasons: a) the Medford Housing Authority, which is a public body corporate and politic organized under Massachusetts General Laws Chapter 121B, is not an agency of the United States, and b) the Plaintiff is a resident of Lynnfield, Massachusetts, and c) the matter in controversy does not exceed \$75,000.00 exclusive of

**EXHIBIT B (p. 1 of 6)**

**EXHIBIT B Cont.**

interest and costs. The citizenship of the parties and the sum or value of the matter in controversy, by the Plaintiff's own allegations of citizenship under 28 U.S.C. § 1332, clearly negate the jurisdiction of the federal court in this matter. The Plaintiff, by alleging no diversity of citizenship and by alleging damages which cannot exceed \$19,000.00, has not alleged sufficient facts to comply with the necessary requirements to file or sustain a federal court complaint and jurisdiction on the basis of diversity of citizenship.

4. There is no claim or allegation in the Plaintiff's Complaint that the action arises under the Constitution, laws, or treaties of the United States, or that this action is against a foreign state.

WHEREFORE, the Defendant Medford Housing Authority hereby moves and request that this Court dismiss the Plaintiff's Complaint and, pursuant to 28 U.S.C. § 1332, impose costs and/or sanctions against the Plaintiff as allowed under said § 1332 for diversity of citizenship claims where the Plaintiff is adjudged to be entitled to recover less than \$75,000.00, as this action is initiated in bad faith since, on the face of said Complaint, recovery cannot reach the minimum recovery of \$75,000.00 required under the statute.

Date: December 23, 2004

Respectfully submitted  
Medford Housing Authority  
By its attorney:

John L. Greco  
John L. Greco  
c/o Medford Housing Authority  
121 Riverside Avenue  
Medford, MA 02155  
Telephone No. 781-396-7200  
BBO # 208460

**EXHIBIT B Continued (p.2 of 6)**

**EXHIBIT B Cont.**

**UNITED STATES DISTRICT COURT**  
**District of Massachusetts**

Case Number 04-12485 RWZ

**Francis G. Falzarano**  
**D/B/A North Hill Construction Co.**  
**Plaintiff**

v.

**Medford Housing Authority**  
**Director, John Greco**

**AFFIDAVIT IN SUPPORT OF MOTION**

I, John L. Greco, Executive Director and General Counsel of the Medford Housing Authority hereby state, represent, and make Affidavit as follows:

1. On or about October 22, 2004, a hearing was held in Peabody District Court, Essex County Peabody, Massachusetts entitled North Hill Construction Co. v. Medford Housing Authority, Docket Number 200486SC000562 for the same cause of action on which the subject federal court claim is based. See copy of attached Exhibit A-1.
2. On or about October 25, 2004, the Peabody District Court rendered Judgment for Defendant Medford Housing Authority, thereby making the subject federal claim res judicata.
3. There is no appeal allowed, claimed, or pending in the Peabody District Court case.
4. The Medford Housing Authority is not an agency of the United States, but is rather a corporate and politic body organized and existing under state law, to wit, Massachusetts General Laws Chapter 121B.

**EXHIBIT B Continued (p. 3 of 6)**



**EXHIBIT B Cont.**

5. The amount of the controversy in question at the state court level was already decided in favor of the Defendant Medford Housing Authority. On the basis of the face of the Plaintiff's Complaint in the subject federal case, the amount does not exceed \$19,000.00, a sum far below the \$75,000.00 required under 28 U.S.C. § 1332. Additionally, there is no diversity of citizenship between the parties nor is the requisite diversity of citizenship alleged in the Complaint.

Signed and submitted under pains and penalties of perjury, this <sup>23rd</sup> day of December,

2004



John L. Greco

**EXHIBIT B Continued (p. 9 of 6)**

**EXHIBIT B Cont.**

**Rule 7.1 CERTIFICATE OF MOTION PRACTICE**

I, John L. Greco, attorney for Defendant Medford Housing Authority hereby certify that I have conferred with Francis G. Falzarano regarding my Motion to Dismiss and have attempted in good faith to resolve or narrow the issue. Mr. Falzarano stated that he does not agree with the basis of my Motion to Dismiss and he intends to pursue his complaint.

Date: December 23, 2004

Signed: John L Greco

**EXHIBIT B Continued (p. 5 of 6)**

**EXHIBIT B Cont.**

**CERTIFICATE OF SERVICE**

I, John L. Greco, attorney for the Medford Housing Authority, hereby certify that on this day, by mailing same postage-prepaid first class mail and Certified Mail Return Receipt Requested No. 7099 3400 0010 2444 2883, I served a copy of

1. Defendant's Motion to Dismiss Complaint and for Costs, and
2. Affidavit in Support of Motion and Certificate of Motion Practice

on Francis G. Falzarano, D/B/A North Hill Construction Co., Plaintiff, 19 North Hill Drive, Lynnfield, Massachusetts 01940.

Signed and sworn to under pains and penalties of perjury.

Date: December 23, 2004

John L. Greco  
John L. Greco  
c/o Medford Housing Authority  
121 Riverside Avenue  
Medford, MA  
Telephone No. 781-396-7200  
BBO #208460

**EXHIBIT B Continued (p. 6 of 6)**